

U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

GI

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

JAN 16 2004

FILE: [REDACTED] Office: Philadelphia

Date:

IN RE: Obligor:
Bonded Alien:

[REDACTED]

IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under Section 103
of the Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:

[REDACTED]

Identification data deleted to
protect privacy
invasion of privacy


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Philadelphia, Pennsylvania. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the Administrative Appeals Office on a motion to reconsider. The motion will be granted. The order dismissing the appeal will be affirmed.

The record indicates that on September 24, 2002, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated October 29, 2002, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 10:15 a.m. on November 15, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On November 18, 2002, the district director informed the obligor that the delivery bond had been breached.

On motion, counsel states that the AAO failed to address the argument that ICE lost statutory detention authority and hence the authority to maintain a delivery bond when the immigration judge granted the alien voluntary departure without the requirement of a bond or other conditions.

The record reflects that a removal hearing was held on September 18, 2002, and the alien was granted voluntary departure from the United States on or before October 18, 2002, with an alternate order of removal to take effect in the event that the alien failed to depart as required. The court did not order the alien to post a voluntary departure bond and did not set other conditions on the grant of voluntary departure. The right of appeal was waived.

The AAO has continually held that the Secretary's authority to maintain a delivery bond is not contingent upon his authority to detain the alien. Counsel argues this ruling ignores the statutory framework established by amendments to the Immigration and Nationality Act (the Act) by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).

As noted by counsel, ICE authority to arrest and detain an alien under section 236 of the Act terminates when a decision is made whether an alien is to be removed from the United States, as for example, upon the grant of voluntary departure without the setting of conditions. ICE detention and removal authority under section 241 of the Act begins with an order of removal, for example, upon the alien's overstay of the voluntary departure period. Counsel argues that during the period of voluntary departure where the alien has not reserved appeal, and without conditions on departure such as an order to produce a travel document or to post a voluntary departure bond, ICE has no authority to detain the alien, and thus no authority to maintain

a delivery bond. Counsel argues that bonding authority is a form of constructive detention, and a loss of detention authority requires cancellation of the delivery bond.

The Form I-352 for bonds conditioned upon the delivery of the alien includes the following provision: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until exclusion/deportation/removal proceedings . . . are finally terminated." (Emphasis added). Thus, the obligor is contractually bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

Counsel posits that once ICE no longer has detention authority over the alien, it can no longer require a delivery bond. However, this ignores the holdings of *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002). In *Zadvydas*, the Supreme Court expressly recognized the authority of the legacy INS to require the posting of a bond as a condition of release after it lost detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan*, the 9th Circuit held the legacy INS had the authority to require a \$10,000 delivery bond in a supervised release context even though it did not have detention authority. Even though these cases arose in the post-removal period, it is obvious from the rulings that detention authority is not the sole determining factor as to whether ICE can require a delivery bond.

The bond contract provides that it may be canceled when (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of removal has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

The immigration court's failure to order the posting of a voluntary departure bond does not alter the terms of the bond contract, and does not serve to extinguish the delivery bond despite ICE loss of detention authority during the period of voluntary departure. The delivery bond requires delivery of the alien to ICE upon demand or until proceedings have terminated, and is not conditioned upon a theory of constructive detention.

Counsel requests oral argument in light of the complexity of the issues. Oral argument is limited to cases where cause is shown. It must be shown that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for argument is shown. Therefore, the request is denied.



After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The order dismissing the appeal will be affirmed.

ORDER: The order of February 28, 2003 dismissing the appeal is affirmed.